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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the World Confederation of Labour, a non-governmental organization in consultative status (category I), by the American Association of Jurists, Andean Commission of Jurists - Colombian Section, Arab Lawyers Union, Arab Organization for Human Rights, Commission for the Defence of Human Rights in Central America, Commission of the Churches on International Affairs of the World Council of Churches, Defence for Children International, Human Rights Advocates, International Association of Democratic Lawyers, International Federation Terre des Hommes, International Fellowship of Reconciliation, International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Movement for Fraternal Union among Races and Peoples, International Service for Human Rights, Latin American Federation of Associations of Relatives of Disappeared Detainees, Pax Christi International, Pax Romana, Service Justice and Peace in Latin America, Union of Arab Jurists, Women's International League for Peace and Freedom, World Association of Former United Nations Interns and Fellows and World University Service, non-governmental organizations in consultative status (category II), and by the Movement against Racism and for Friendship among Peoples, World Organization against Torture and World Social Prospects Association, non-governmental organizations on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

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1. We think that a study on the impunity of gross violations of human rights should take into account the following points:

(a) Crimes against humanity. The notion of crime against humanity is an integral part of present international law. On 8 April 1945, with the signature of the Agreement of London, this concept took the character of a natural right in the statute of military tribunals: Statute of the International Military Tribunal of Nuremberg, paragraph (c) of article 6; Charter of the Military Tribunal for the Far East, paragraph (c) of article 5; Law No. 10 of the Council of the Allied Control, paragraph 36 (c) of article II and in the jurisprudence of the Tribunals of Nuremberg and Tokyo. Later on, it was the subject of different resolutions of the General Assembly 1/ and it is present in the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

(b) Gross violations of civil and political human rights;

(c) Gross violations of economic, social and cultural rights and of the right to development. Many economic practices recommended and carried out by the International Monetary Fund and the World Bank and by large corporations as well as by transnational banks, along with so-called "white collar crime", negate any possibility for peoples and individuals to enjoy their economic, social and cultural rights also constitute gross violations of fundamental human rights which must not go unpunished. The protection of human rights must be global, because of the indivisibility and interdependence of economic, social, cultural, civil and political rights as recognized by the General Assembly. 2/

2. Impunity is not a problem peculiar to some regions of the world. It must be studied from a global point of view. Wherever human rights have been violated, or continue to be violated, without the culprits being prosecuted and punished, the problem of impunity arises.

3. Impunity also has a political dimension. Crimes against humanity and gross violations of human rights negate every possibility of coexistence between human beings and, as a consequence, every democratic procedure for settling disputes in society. Impunity only makes it worse and, to this extent, hampers democratic evolution. Transitions towards democracy or peace negotiations in situations of internal conflict are doomed to failure if they do not take into account the punishment of the culprits, the eviction from the administration of State officials who have violated human rights and the outlawing of the doctrines and practices which lead to violations. Where there is impunity, there is no democracy.

4. Gross violations of human rights committed in the past must be punished. First of all because crimes against humanity are not subject to statutes of limitation 3/ and international law imposes the obligation to punish the culprits. The concept of crime against humanity is not closed; it does not refer to a limited series of criminal acts.

5. In his report to the French Cour de Cassation on the Barbie case, Counsellor Le Guhenec stated that a crime against humanity is "... first of all a violation of fundamental human rights: the right to equality, without distinction as to race, colour or nationality and the right to the respect of political or religious opinions of every human being. This crime is not only intended to provoke injury or death; it adds to injuries or to death a voluntary, deliberate and gratuitous violation of the dignity of the victims, because they belong to a human group different from that of the culprits or which does not accept their domination".

In the same report, Counsellor Le Guhenec affirmed that the motive which inspired the author of a crime against humanity, that is to say his desire "to associate himself with a governmental or State policy of extermination, persecution or deportation motivated by political, racial or religious reasons". This was also the conclusion of the solicitor-general, M. Dontewille: "... everybody is agreed that at this level the crime against humanity supposes the implementation of a programmed State policy".

6. Other gross violations of human rights which are not crimes against humanity must have statutes of limitation proportional to their gravity. These grave crimes should not go unpunished because the effective application of punishment to those who have committed them demonstrates the value that society places on life, freedom and dignity. The aim of punishment is to maintain the rule of law as an orientative model of social relations and to ensure that gross violations of human rights remain engraved in the historical memory of peoples so as to avoid their repetition.

7. The impunity enjoyed by the culprits encourages the repetition of the crime, as was recognized by the Special Rapporteur on torture 4/ and by the Working Group on Enforced or Involuntary Disappearances. 5/ Impunity is a means to ensure the persistence of State terrorism.

8. Impunity endangers international law because it negates the justiciable character of human rights consecrated by the Universal Declaration of Human Rights (art. 8) and the International Covenant on Civil and Political Rights. On the other hand, international law imposes on States the general obligation to pursue, try and punish the authors of gross violations of fundamental human rights. Equally, reparation on the moral and material harm suffered must be an inalienable right of the victims and of their relatives. The effect of this reparation must not be to paralyse actions aimed at investigating the crimes, condemning the culprits or avoiding State responsibility. Impunity is a manifest violation of this general obligation.

9. Impunity is in itself a violation of the right to justice recognized by the Universal Declaration (arts. 7 and 8) and the International Covenant on Civil and Political Rights (arts. 2 and 14). Impunity infringes, inter alia, the right of the families of the victims of enforced disappearances to know the fate of their relatives, a right expressly recognized by the international law of armed conflicts 6/ and by the Inter-American Court of Human Rights. 7/ In this respect, impunity renders inoperative the international system of protection of human rights.

10. Numerous and various are the mechanisms, practices and institutions that make impunity possible. We believe that the study of impunity cannot be limited to the phenomenon of amnesty and leave aside some important mechanisms which enable States to divest themselves of their obligation to punish the perpetrators of crimes against humanity and gross violations of human rights. Consequently, we are convinced that any study on impunity must take into account the following phenomena:

(a) Amnesties and pardons;

(b) Compulsory submission and other forms of exoneration from criminal responsibility;

(c) Penal privileges granted to the perpetrators of grievous violations of human rights, which have in practice the same effect as amnesties;

(d) Judicial and administrative procedures that hinder or prevent the punishment of violations of human rights as well as special procedures and judicial privileges that guarantee impunity to State officials;

(e) Loss of independence of the judiciary and the militarization of the administration of justice;

(f) Attribution of competence to military tribunals to judge crimes pertaining to ordinary criminal legislation or the subject of international law;

(g) Attribution of facilities of judicial and investigating police to armed and security forces;

(h) Maintenance in office of State officials who have violated human rights by omission or commission;

(i) Teaching of doctrines such as those of "national security" and of "low intensity conflicts" in military or police schools and in general the training which is given to military and security personnel in contradiction to the respect of values inherent to the human condition;

(j) Inappropriate regulation of international and regional mechanisms for the protection of human rights in national legislations;

(k) Existence of paramilitary groups as well as of illegal structures inside State security services;

(l) Violations of the right consecrated in the Universal Declaration, in the International Covenants on Human Rights and in other international instruments when they clearly seem linked to the misuse or abuse of power indicated above.

11. Finally, we deem it necessary to try to find permanent solutions to this serious evil and for this reason we suggest:

(a) The establishment within the United Nations system of a permanent mechanism on impunity - a special rapporteur or working group, for instance - that would look more closely into this phenomenon;

(b) The adoption of an international instrument on impunity, as well as of a convention on enforced disappearances;

(c) The periodic establishment and publication of lists giving the identity of the perpetrators of violations of human rights;

(d) The publication of information concerning the status of investigations and legal proceedings. 8/

(e) The adoption and implementation of measures aimed at the realization of the principle of universal jurisdiction, consecrated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 5 and 7) and in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (art. 9);

(f) The creation of an international criminal jurisdiction, as provided for by the Convention on the Prevention and Punishment of the Crime of Genocide (arts. V and VI) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (arts. IV and VI). The General Assembly has requested the International Law Commission to continue its work on this issue.

Notes

1/ Resolutions 95 (I) of 1946, 177 (II) of 1947, 488 of 1950, 3 (I) of 1946 and 2583 (XXIV) of 1969.

2/ Resolutions 32/130 of 16 December 1977, 44/130 of December 1989 and 45/96 of 14 December 1990.

3/ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

4/ E/CN.4/1990/17.

5/ E/CN.4/1990/13, E/CN.4/1991/20 and E/CN.4/1992/18 and Add.1.

6/ Protocol I additional to the Geneva Conventions of 12 August 1949 of 8 June 1974, art. 32.

7/ Decisions on the disappearances of Manfredo Velásquez and Godínez Cruz, of 29 July 1988 and 20 January 1989.

8/ E/CN.4/1992/18, para. 22.